



Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS-SC-21-0086; SC22-985-1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2022-2023 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and allotment percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, Oregon, and designated parts of Nevada and Utah (the Far West) for the 2022-2023 marketing year.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be submitted via the internet at:

<http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Market

Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email: Joshua.R.Wilde@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule amends Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of spearmint oil producers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of regulatory alternatives and, if regulation is necessary, to select a regulatory approach likely to maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions of Executive Order 12866. It emphasizes the importance of seeking the views of those who are likely to be affected by proposed regulation, providing an opportunity for public comment, and basing regulatory actions on a consideration of objective scientific, technical, and economic data.

This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. Agricultural Marketing Service (AMS) has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. Under the Order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish quantities and allotment percentages for Scotch and Native spearmint oil for the 2022-2023 marketing year, which begins on June 1, 2022.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements in § 985.50 of the Order, the Committee meets each year to consider supply and demand of spearmint oil and to adopt a marketing policy for the ensuing marketing year. In determining such marketing policy, the Committee considers several factors, including, but not limited to, the current and projected supply of oil, estimated future demand, production costs, and producer prices for both classes of spearmint oil. Input from spearmint oil handlers and producers are considered as well.

Pursuant to the provisions in § 985.51, when the Committee's marketing policy considerations indicate a need to establish or to maintain stable market conditions through volume regulation, the Committee subsequently recommends to USDA the establishment of a salable quantity and allotment percentage for such class or classes of oil for the upcoming marketing year. Recommendations for volume control are intended to ensure market requirements for Far West spearmint oil are satisfied and orderly marketing conditions are maintained.

Section 985.12 defines salable quantity as the total quantity of each class of oil (Scotch or Native) which handlers may purchase from, or handle on behalf of, producers during a given marketing year. A producer's allotment base is their calculated share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable, normal adjustments to such base as prescribed by the Committee and approved by USDA. Each producer's annual allotment of salable spearmint oil is calculated by multiplying their respective allotment base for each class of spearmint oil by the allotment percentage for that class of spearmint oil. The allotment percentage is the percentage used to calculate each producer's prorated share of the salable quantity and is derived by dividing the salable quantity for each class of spearmint oil by the total of all producers' allotment base for the same class of oil. The total allotment base is revised each year on June 1 to account for producer base being lost

as a result of the “bona fide effort” production provision of § 985.53(e) and additional base made available pursuant to the provisions of § 985.153.

Salable quantities and allotment percentages are established at levels intended to fulfill market requirements and to maintain orderly marketing conditions. Committee recommendations for volume control are made in advance of the upcoming marketing year in which the regulations are to be effective, thereby allowing producers ample time to adjust their production decisions accordingly.

The Committee met on October 13, 2021, to consider its marketing policy for the 2022-2023 marketing year. At that meeting, the Committee determined that, based on the current market and supply conditions, volume regulation for both classes of oil would be necessary. The Committee unanimously recommended a salable quantity and allotment percentage for Scotch spearmint oil of 832,546 pounds and 37 percent and a salable quantity and allotment percentage for Native spearmint oil of 1,101,269 pounds and 43 percent.

This proposed action would establish the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2022-2023 marketing year, which begins on June 1, 2022. Salable quantities and allotment percentages have been placed into effect each season since the Order's inception in 1980.

Scotch Spearmint Oil

The Committee recommended a Scotch spearmint oil salable quantity of 832,546 pounds and an allotment percentage of 37 percent for the 2022-2023 marketing year. The proposed 2022-2023 marketing year salable quantity of 832,546 pounds is 14,138 pounds less than the 2021-2022 marketing year salable quantity of 846,684 pounds. The allotment percentage, recommended at 37 percent for the 2022-2023 marketing year, is one percent less than the percentage in effect the previous year. The total allotment base for the coming marketing year is estimated to be 2,250,124 pounds. This figure

represents a one-percent increase over the revised 2021-2022 marketing year total allotment base of 2,227,846 pounds. The salable quantity (832,546 pounds) is the product of total allotment base (2,250,124 pounds) times the allotment percentage (37 percent).

The Committee considered several factors in making its recommendation, including the current and projected future supply, estimated future demand, production costs, and producer prices. The Committee's recommendation also accounts for the established acreage of Scotch spearmint, consumer demand, existing carry-in, reserve pool volume, and increased production in competing markets.

According to the Committee, as costs of production have increased and spearmint oil prices have decreased, many producers have forgone new plantings of Scotch spearmint. This has resulted in a significant decline in production of Scotch spearmint oil in recent years. Production has decreased from 1,113,346 pounds produced in 2016 to an estimated 556,559 pounds of Scotch spearmint production in 2021.

Industry reports indicate that trade demand for Far West Scotch spearmint oil has diminished over the past five years as international markets for spearmint-flavored products have slowed. Sales of Far West Scotch spearmint oil have declined from 1,060,232 pounds during the 2014-2015 marketing year to 717,952 pounds in 2018-2019, and further to 488,484 pounds in 2020-2021, the last full year of available data. In addition to declining spearmint oil demand, increasing production of Scotch spearmint oil in competing markets, most notably by Canadian producers, has put additional downward pressure on the Far West Scotch spearmint oil market.

Given the anticipated market conditions for the coming year, the Committee estimates that Scotch spearmint oil trade demand for the 2022-2023 marketing year trade will be 650,000 pounds, which is 25,000 pounds higher than the prior year estimate and right in line with the 5-year moving sales average of 650,033 pounds. Should the

proposed volume regulation levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases, as it has in previous marketing years.

The Committee calculated the minimum salable quantity of Scotch spearmint oil that would be required during the 2022-2023 marketing year (311,105 pounds) by subtracting the estimated salable carry-in on June 1, 2022, (338,895 pounds) from the estimated trade demand (650,000 pounds). This minimum salable quantity represents the estimated minimum amount of Scotch spearmint oil that would be needed to satisfy estimated trade demand for the coming year. To ensure that the market would be fully supplied, the Committee recommended a 2022-2023 marketing year salable quantity of 832,546 pounds. The recommended salable quantity, combined with an estimated 338,895 pounds of salable carry-in from the previous year, would yield a total available supply of 1,171,441 pounds of Scotch spearmint oil for the 2022-2023 marketing year. With the recommended salable quantity and current market environment, the Committee estimates that as much as 521,441 pounds of salable Scotch spearmint oil could be carried into the 2022-2023 marketing year.

Salable carry-in is the primary measure of excess spearmint oil supply under the Order, as it represents overproduction in prior years that is currently available to the market without restriction. Under volume regulation, spearmint oil that is designated as salable continues to be available to the market until it is sold and may be marketed at any time at the discretion of the owner.

The Committee estimates that there will be 338,895 pounds of salable carry-in of Scotch spearmint oil on June 1, 2022. If current market conditions are maintained and the Committee's projections are correct, salable carry-in would increase to 521,441 pounds at the beginning of the 2022-2023 marketing year. This level would be above the quantity that the Committee generally considers favorable (150,000 pounds). However,

the Committee believes that, given the current economic conditions in the Scotch spearmint oil industry, some Scotch spearmint oil producers may not produce enough oil in the 2022-2023 marketing year to fill all of their annual allotment. The Committee estimates that as much as 280,671 pounds of 2021-2022 marketing year annual allotment may not be filled by producers. While the Committee has not projected unused base allotment for the upcoming 2022-2023 marketing year, it anticipates that the actual quantity of Scotch spearmint oil carried into the following marketing year will be less than the quantity calculated above (521,441 pounds).

Spearmint oil held in reserve is oil that has been produced in excess of a producer's annual allotment, either in the current marketing year or in prior years. After December 1 of each marketing year, reserve pool oil is not available to the market in the current marketing year without an increase in the salable quantity and allotment percentage. However, reserve oil may be released for limited market development projects with approval of the Secretary. Oil held in the reserve pool is another indicator of excess supply. Scotch spearmint oil held in the reserve pool was 72,361 pounds as of May 31, 2021, up from 67,645 pounds as of May 31, 2020. This quantity of reserve pool oil should be an adequate buffer to supply the market, if necessary, should the industry experience an unexpected increase in demand.

The Committee recommended an allotment percentage of 37 percent for the 2022-2023 marketing year for Scotch spearmint oil. During its October 13, 2021, meeting, the Committee calculated an initial allotment percentage by dividing the minimum required salable quantity (311,105 pounds) by the total estimated allotment base (2,250,124 pounds), resulting in 13.8 percent. However, producers and handlers at the meeting indicated that the computed percentage (13.8 percent) might not adequately supply potential 2022-2023 Scotch spearmint oil market demand and may also result in a less than desirable carry-in for the subsequent marketing year. After deliberation, the

Committee recommended an allotment percentage of 37 percent. The total estimated allotment base (2,250,124 pounds) for the 2022-2023 marketing year, multiplied by the recommended salable allotment percentage (37 percent), yields 832,546 pounds, which is the recommended salable quantity for the 2022-2023 marketing year.

The 2022-2023 marketing year computational data for the Committee's recommendations is detailed below.

(A) Estimated carry-in of Scotch spearmint oil on June 1, 2022: 338,895 pounds.

This figure is the difference between the 2021-2022 marketing year total available supply of 963,895 pounds and the revised 2021-2022 marketing year estimated trade demand of 625,000 pounds.

(B) Estimated trade demand of Scotch spearmint oil for the 2022-2023 marketing year: 650,000 pounds. This figure was established at the Committee meeting held on October 13, 2021.

(C) Salable quantity of Scotch spearmint oil required from the 2022-2023 marketing year production: 311,105 pounds. This figure is the difference between the estimated 2022-2023 marketing year trade demand (650,000 pounds) and the estimated carry-in on June 1, 2021 (338,895 pounds). This salable quantity represents the minimum amount of Scotch spearmint oil that would be needed to satisfy estimated demand for the coming year.

(D) Total estimated Scotch spearmint oil allotment base of for the 2022-2023 marketing year: 2,250,124 pounds. This figure represents a one-percent increase over the 2021-2022 total actual allotment base of 2,227,846 pounds, as prescribed by § 985.53(d). The one-percent increase equals 22,278 pounds. This total estimated allotment base is revised each year on June 1 in accordance with § 985.53(e).

(E) Computed Scotch spearmint oil allotment percentage for the 2022-2023 marketing year: 13.8 percent. This percentage is computed by dividing the minimum

required salable quantity (311,105 pounds) by the total estimated allotment base (2,250,124 pounds).

(F) Recommended Scotch spearmint oil allotment percentage for the 2022-2023 marketing year: 37 percent. This is the Committee's recommendation and is based on the computed allotment percentage (13.8 percent) and input from producers and handlers at the October 13, 2021, meeting. The recommended 37 percent allotment percentage reflects the Committee's belief that the computed percentage (13.8 percent) may not adequately supply the anticipated 2022-2023 marketing year Scotch spearmint oil market demand.

(G) Recommended Scotch spearmint oil salable quantity for the 2022-2023 marketing year: 832,546 pounds. This figure is the product of the recommended salable allotment percentage (37 percent) and the total estimated allotment base (2,250,124 pounds) for the 2022-2023 marketing year.

(H) Estimated total available supply of Scotch spearmint oil for the 2022-2023 marketing year: 1,171,441 pounds. This figure is the sum of the 2022-2023 marketing year recommended salable quantity (832,546 pounds) and the estimated carry-in on June 1, 2021 (338,895 pounds).

For the reasons stated above, the Committee believes that the recommended salable quantity and allotment percentage would adequately satisfy trade demand, would result in a reasonable carry-in for the following year, and would contribute to the orderly marketing of Scotch spearmint oil.

Native Spearmint Oil

The Committee recommended a Native spearmint oil salable quantity of 1,101,269 pounds and an allotment percentage of 43 percent for the 2022-2023 marketing year. These figures are, respectively, 162,872 pounds and 6 percentage points higher than the levels established for the 2021-2022 marketing year. The Committee utilized

handlers' estimated trade demand of Native spearmint oil for the coming year, historical and current Native spearmint oil production, inventory statistics, and international market data obtained from consultants for the spearmint oil industry to arrive at these recommendations.

The Committee anticipates that 2021 Native spearmint oil production will total 985,797 pounds, down substantially from the previous year's production of 1,181,230 pounds. Committee records indicate that spearmint producing acres in the Far West have declined from a recent high of 9,013 acres in 2019 to an estimated 6,275 acres of Native spearmint production 2021.

However, sales of Native spearmint oil recovered from a 10-year low of 1,076,906 pounds in the 2019-2020 marketing year to 1,332,260 pounds in 2020-2021, the last full year of reported sales. The Committee estimates that trade demand for Native spearmint oil will be 1,200,000 pounds for the 2022-2023 marketing year, which is somewhat less than the 5-year sales average of 1,301,490 pounds.

The Committee expects that 284,357 pounds of salable Native spearmint oil from prior years will be carried into the 2022-2023 marketing year. This amount is down from the 412,095 pounds of salable oil carried into the 2021-2022 marketing year, but still above the level that the Committee generally considers favorable.

Further, the Committee estimates that there will be 1,272,854 pounds of Native spearmint oil in the reserve pool at the beginning of the 2022-2023 marketing year. This figure is 73,062 pounds higher than the quantity of reserve pool oil held by producers on June 1, 2021, and well above the level that the Committee believes is optimal. Generally, reserve pool oil has been steadily increasing over the past several marketing years, climbing from 996,050 pounds of reserve oil since the start of the 2016-2017 marketing year.

The Committee expects end users of Native spearmint oil to continue to rely on Far West production as their primary source of high-quality Native spearmint oil. Overseas production of Native spearmint has declined in recent years. As a result, U.S. exports of Native spearmint oil have been steadily increasing since 2018. However, increased domestic production of Native spearmint from regions outside of the Far West production area has created additional domestic competition for market share. For instance, there were fewer than 2,000 acres of Native spearmint production in the U.S. Midwest region in 2016, which compares to over 10,000 acres of Native spearmint oil production in the Far West. However, 2021 estimates show that Far West acreage has declined to approximately 6,275 acres, compared to acreage increasing to around 5,000 acres in the Midwest. This situation has contributed to declining trade demand for Far West Native spearmint oil and led to downward pressure on producer prices.

The Committee chose to be cautiously optimistic in the establishment of its trade demand estimate for the 2022-2023 marketing year to ensure that the market would be adequately supplied. At the October 13, 2021, meeting, the Committee estimated the 2022-2023 marketing year Native spearmint oil trade demand to be 1,200,000 pounds. This figure is based on input provided by producers at nine production area meetings held in early October 2021, as well as estimates provided by handlers and other meeting participants. This figure represents an increase of 134,000 pounds from the previous year's revised trade demand estimate. The average estimated trade demand for Native spearmint oil derived from the area producer meetings was 1,173,333 pounds, whereas the handlers' estimates ranged from 950,000 to 1,300,000 pounds. The average of Native spearmint oil sales over the last three years was 1,301,490 pounds. The quantity marketed over the most recent full marketing year, 2020-2021, was 1,332,260 pounds.

The estimated June 1, 2022, carry-in of 284,357 pounds of Native spearmint oil, plus the recommended 2022-2023 marketing year salable quantity of 1,101,269 pounds,

would result in an estimated total available supply of 1,385,626 pounds of Native spearmint oil during the 2022-2023 marketing year. With the corresponding estimated trade demand of 1,200,000 pounds, the Committee projects that 185,626 pounds of oil will be carried into the 2023-2024 marketing year. This would result in a year-over-year decrease of 98,731 pounds. The Committee estimates that there will be 1,272,854 pounds of Native spearmint oil held in the reserve pool at the beginning of the 2022-2023 marketing year. Should the industry experience an unexpected increase in trade demand, oil in the Native spearmint oil reserve pool could be released through an intra-seasonal increase to satisfy that demand.

The Committee recommended an allotment percentage of 43 percent for the 2022-2023 marketing year. During its October 13, 2021, meeting, the Committee calculated an initial allotment percentage of 35.8 percent by dividing the minimum required salable quantity to satisfy estimated trade demand (915,643 pounds) by the total allotment base (2,561,090 pounds). However, producers and handlers at the meeting expressed that the computed percentage of 35.8 percent may not adequately supply the potential 2022-2023 marketing year Native spearmint oil market demand or result in adequate carry-in for the subsequent marketing year. After deliberation, the Committee increased the recommended allotment percentage to 43 percent. The total estimated allotment base (2,561,090 pounds) for the 2022-2023 marketing year multiplied by the recommended salable allotment percentage (43 percent) yields 1,101,269 pounds, the recommended salable quantity for the year.

The 2022-2023 marketing year computational data for the Committee's recommendations is further outlined below.

(A) Estimated carry-in of Native spearmint oil on June 1, 2022: 284,357 pounds.

This figure is the difference between the 2021-2022 marketing year total available supply

of 1,350,357 pounds and the revised 2021-2022 marketing year estimated trade demand of 1,066,000 pounds.

(B) Estimated trade demand of Native spearmint oil for the 2022-2023 marketing year: 1,200,000 pounds. This estimate was established by the Committee at the October 13, 2021 meeting.

(C) Salable quantity of Native spearmint oil required from the 2022-2023 marketing year production: 915,643 pounds. This figure is the difference between the 2022-2023 marketing year estimated trade demand (1,200,000 pounds) and the estimated carry-in on June 1, 2022 (284,357 pounds). This is the minimum amount of Native spearmint oil that the Committee believes would be required to meet the anticipated 2022-2023 marketing year trade demand.

(D) Total estimated allotment base of Native spearmint oil for the 2022-2023 marketing year: 2,561,090 pounds. This figure represents a one-percent increase over the 2021-2022 total actual allotment base of 2,535,733 pounds as prescribed in § 985.53(d). The one-percent increase equals 25,357 pounds of oil. This estimate is revised each year on June 1, to adjust for the bona fide effort production provisions of § 985.53(e).

(E) Computed Native spearmint oil allotment percentage for the 2022-2023 marketing year: 35.8 percent. This percentage is calculated by dividing the required salable quantity (915,643 pounds) by the total estimated allotment base (2,561,090 pounds) for the 2022-2023 marketing year.

(F) Recommended Native spearmint oil allotment percentage for the 2022-2023 marketing year: 43 percent. This is the Committee's recommendation based on the computed allotment percentage (35.8 percent) and input from producers and handlers at the October 13, 2021 meeting. The recommended 43 percent allotment percentage is also based on the Committee's belief that the computed percentage (35.8 percent) may not adequately supply the potential market for Native spearmint oil in the 2022-2023

marketing year or allow for salable Native spearmint oil to be carried into the beginning of the 2023-2024 marketing year.

(G) Recommended Native spearmint oil 2022-2023 marketing year salable quantity: 1,101,269 pounds. This figure is the product of the recommended allotment percentage (43 percent) and the total estimated allotment base (2,561,090 pounds).

(H) Estimated available supply of Native spearmint oil for the 2022-2023 marketing year: 1,385,626 pounds. This figure is the sum of the 2022-2023 recommended salable quantity (1,101,269 pounds) and the estimated carry-in on June 1, 2022 (284,357 pounds). This amount could be increased, as needed, through an intra-seasonal increase in the salable quantity and allotment percentage.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 832,546 pounds and 37 percent, and 1,101,269 pounds and 43 percent, respectively, would match the available supply of each class of spearmint oil to the estimated demand of each, thus avoiding extreme fluctuations in inventories and prices. This proposed rule is similar to regulations issued in prior seasons.

The salable quantities in this proposed rule are not expected to cause a shortage of either class of spearmint oil. Any unanticipated or additional market demand for either class of spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity and corresponding allotment percentage. The Order contains a provision in § 985.51 for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, on December 1 of each year, producers who have not transferred their excess spearmint oil to other producers

must place their excess spearmint oil production into the reserve pool to be released in the future, in accordance with market needs and under the Committee's direction.

In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2022-2023 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, meets the requirements of §§ 985.50 and 985.51.

The establishment of the proposed salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This proposal would also provide producers with information regarding the amount of spearmint oil that should be produced for the 2022-2023 season to meet anticipated market demand.

Initial Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 39 producers of Scotch spearmint oil and 93 producers of Native spearmint oil operating within the regulated production area. In addition, there are approximately 9 spearmint oil handlers (both Scotch and Native spearmint) subject to regulation under the Order. Small agricultural service firms are defined by the Small

Business Administration (SBA) as those having annual receipts of less than \$30,000,000, and small agricultural producers are defined as those having annual receipts of less than \$1,000,000 (13 CFR 121.201).

The Committee reported that recent producer prices for spearmint oil have ranged from \$14.00 to \$17.00 per pound. The National Agricultural Statistics Service (NASS) reported that the 2020 U.S. season average spearmint oil producer price per pound was \$16.90. Spearmint oil utilization for the 2020-2021 marketing year, as reported by the Committee, was 488,484 pounds and 1,332,260 pounds for Scotch and Native spearmint oil, respectively, for a total of 1,820,744 pounds. Multiplying \$16.90 per pound by 2020-2021 marketing year spearmint oil utilization of 1,820,744 pounds yields a crop value estimate of about \$30.77 million.

Given the accounting requirements for the volume regulation provisions of the Order, the Committee maintains accurate records of each producer's production and sales. Using the \$16.90 average spearmint oil price, and Committee production data for each producer, the Committee estimates that 37 of the 39 Scotch spearmint oil producers and 92 of the 93 Native spearmint oil producers could be classified as small entities under the SBA definition.

There is no third party or governmental entity that collects and reports spearmint oil prices received by spearmint oil handlers. However, the Committee estimates an average spearmint oil handling markup at approximately 20 percent of the price received by producers. Twenty percent of the 2020 producer price (\$16.90) is \$3.38 which results in a handler f.o.b. price per pound estimate of \$20.28 ($\$16.90 + \3.38).

Multiplying this estimated handler f.o.b. price by the 2020-2021 marketing year total spearmint oil utilization of 1,820,744 pounds results in an estimated handler-level spearmint oil value of \$36.92 million. Dividing this figure by the number of handlers (9) yields estimated average annual handler receipts of about \$4.1 million, which is well

below the SBA threshold for small agricultural service firms.

Furthermore, using confidential data on pounds handled by each handler, and the abovementioned estimated handler price per pound, the Committee reported that it is not likely that any of the nine handlers had 2020-2021 marketing year spearmint oil sales that exceeded the \$30 million SBA threshold.

Therefore, in view of the foregoing, the majority of producers of spearmint oil may be classified as small entities, and all of the handlers of spearmint oil may be classified as small entities.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2022-2023 marketing year. The Committee recommended this proposed action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulation allows producers to coordinate their spearmint oil production with the expected market demand. Authority for this proposal is provided in §§ 985.50, 985.51, and 985.52 of the Order.

The Committee estimates the total trade demand for the 2022-2023 marketing year for both classes of oil at 1,850,000 pounds. In addition, the Committee expects that the combined salable carry-in for both classes of spearmint oil will be 623,252 pounds. As such, the combined required salable quantity for the 2022-2023 marketing year is estimated to be 1,226,748 pounds (1,850,000 pounds trade demand less 623,252 pounds carry-in). Under volume regulation, total sales of spearmint oil by producers for the 2022-2023 marketing year would be held to 2,557,067 pounds (the recommended salable quantity for both classes of spearmint oil of 1,933,815 pounds plus 623,252 of carry-in).

This total available supply of 2,557,067 pounds should be more than adequate to

supply the 1,850,000 pounds of anticipated total trade demand for spearmint oil. In addition, as of May 31, 2021, the total reserve pool for both classes of spearmint oil stood at 1,272,153 pounds. That quantity is expected to remain relatively unchanged over the course of the 2021-2022 marketing year, with current Committee reserve pool estimates totaling 1,336,471 pounds. Should trade demand increase unexpectedly during the 2022-2023 marketing year, reserve pool spearmint oil could be released into the market to supply that increase in demand.

The recommended allotment percentages, upon which 2022-2023 marketing year annual allotments are based, are 37 percent for Scotch spearmint oil and 43 percent for Native spearmint oil. Without volume regulation, producers would not be held to these allotment levels, and could sell unrestricted quantities of spearmint oil.

The USDA econometric model used to evaluate the Far West spearmint oil market estimated that the season average producer price per pound (from both classes of spearmint oil) would decline about \$2.70 per pound without volume regulation. The surplus situation for the spearmint oil market that would exist without volume regulation in the 2022-2023 marketing year also would likely dampen prospects for improved producer prices in future years because of the excessive buildup in stocks.

In addition, spearmint oil prices would likely fluctuate with greater amplitude in the absence of volume regulation. The coefficient of variation, or CV (a standard measure of variability), of Far West spearmint oil producer prices for the period 1980-2020 (the years in which the Order has been in effect), is 24 percent, compared to 49 percent for the 20-year period (1960-1979) immediately prior to the establishment of the Order. Since higher CV values correspond to greater variability, this is an indicator of the price stabilizing impact of the Order.

The use of volume regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The

use of volume regulation is believed to have little or no effect on consumer prices of products containing spearmint oil and would not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee rejected the idea of not regulating volume for either class of spearmint oil because of the severe, price-depressing effects that would likely occur without volume regulation. The Committee also discussed and considered salable quantities and allotment percentages that were above and below the levels that were eventually recommended for both classes of spearmint oil. Ultimately, the action recommended by the Committee was to slightly reduce the allotment percentage and salable quantity for Scotch spearmint oil and to increase the salable quantity and allotment percentage for Native spearmint oil from the levels established for the 2021-2022 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

Based on its review, the Committee believes that the salable quantities and allotment percentages recommended would achieve the objectives sought. The Committee also believes that, should there be no volume regulation in effect for the

upcoming marketing year, the Far West spearmint oil industry would return to the pronounced cyclical price patterns that occurred prior to the promulgation of the Order. As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the Order's inception. The salable quantities and allotment percentages proposed herein are expected to facilitate the goal of maintaining orderly marketing conditions for Far West spearmint oil for the 2022-2023 and future marketing years.

Costs to producers and handlers, large and small, resulting from this proposal are expected to be offset by the benefits derived from a more stable market and increased returns. The benefits of this rule are expected to be equally available to all producers and handlers regardless of their size.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes are necessary in those requirements as a result of this proposed action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would establish the salable quantities and allotment percentages for Scotch spearmint oil and Native spearmint oil produced in the Far West during the 2022-2023 marketing year. Accordingly, this proposal would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the spearmint oil industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 13, 2021, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this proposed action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Council and other available information, USDA has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agriculture Marketing Services proposes to amend 7 CFR Part 985 as follows:

**PART 985 - MARKETING ORDER REGULATING THE HANDLING OF
SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Add § 985.237 to read as follows:

§ 985.237 Salable quantities and allotment percentages – 2022-2023 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2022, shall be as follows:

(a) Class 1 (Scotch) oil - a salable quantity of 832,546 pounds and an allotment percentage of 37 percent.

(b) Class 3 (Native) oil - a salable quantity of 1,101,269 pounds and an allotment percentage of 43 percent.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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